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Supreme Court, U.S.
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No. 91-1869

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

PRODUCTION PLATED PLASTICS, INC., MICHIGAN CITY PLASTICS, INC., AND MICHAEL J. LADNEY,

Petitioners,

v.

UNITED STATES OF AMERICA, Frank J. Kelley, Attorney General for the State of Michigan, ex rel.; Michigan Natural Resources Commission; Gordon E. Guyer, Director of the Michigan Department of Natural Resources,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR RESPONDENTS FRANK J. KELLEY, ATTORNEY GENERAL, MICHIGAN NATURAL RESOURCES COMMISSION, AND DIRECTOR OF THE MICHIGAN DEPARTMENT OF NATURAL RESOURCES IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

FRANK J. KELLEY
Attorney General

Thomas L. Casey
Acting Solicitor General
Counsel of Record
P. O. Box 30212
Lansing, Michigan 48909
(517) 373-1124

A. Michael Leffler
Steven E. Chester
Assistant Attorneys General
Attorneys for Respondents

QUESTION PRESENTED

DID THE DISTRICT COURT PROPERLY GRANT SUMMARY JUDGMENT FINDING PETITIONER MICHAEL LADNEY PERSONALLY LIABLE FOR VIOLATIONS OF THE RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. §6901 ET SEQ, AND ITS STATE ANALOG, THE MICHIGAN HAZARDOUS WASTE MANAGEMENT ACT, MICH. COMP. LAWS ANN. §299.501 ET SEQ?

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JURISDICTION

Respondents deny that this Court has jurisdiction under the statutes and court rule cited on page 3 of the petition, but state that this court does have jurisdiction pursuant to 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

This is an environmental case that comes before the Court following the decision of the United States Court of Appeals for the Sixth Circuit affirming two summary judgment rulings against Petitioners by the United States District Court for the Western District of Michigan. Petitioners specifically seek certiorari to challenge the district court's grant of summary judgment finding Petitioner Michael Ladney personally liable for violating the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq, and its state analog, the Michigan Hazardous Waste Management Act ("MHWMA"), 1979 P.A. 64, as amended, Mich. Comp. Laws Ann. §299.501 et seq.

Production Plated Plastics, Inc. ("PPP") is a Michigan corporation which has engaged in molding, electroplating, and painting of plastics parts for the automotive industry at a facility purchased in 1969 and located in Richland, Michigan (the "Richland Facility"). 742 F. Supp. at 958.[1] The processes conducted at the Richland Facility resulted in the generation, discharge, treatment, and storage of hazardous wastes. Id. Michigan City Plastics, Inc. ("MCP") is the parent corporation of PPP owning all of its stock. Id. at 963. Michael Ladney owns 68 percent of MCP's stock

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[1]The case references made above are to United States v. Production Plated Plastics, Inc., 742 F. Supp. 956 (W.D. Mich. 1990). "J.A. at ___" refers to pages in the Joint Appendix filed with the Sixth Circuit.

and, at all relevant times, was the president and a director of both companies. Id.

In 1977, the Michigan Department of Natural Resources ("MDNR") filed a state court action against PPP under Michigan's counterpart to the federal Clean Water Act for groundwater contamination emanating from the Richland Facility. 742 F. Supp. at 958. In 1978, the state court entered a consent order requiring PPP to remove process sludges from several surface impoundments and a waste pile at the Facility, and to install and operate a groundwater purge well system. Id. PPP was required to remove all process sludges within three years of entry of the consent order or by August, 1981. J.A. at 288. Since this did not occur,

the original consent order was subsequently amended several times to specify the minimum amounts of sludges to be removed and to order other remediation procedures.[2]

On August 18, 1980, the United States Environmental Protection Agency ("U.S. EPA") received a "Notification of

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[2]Petitioners claim to have always operated the Richland Facility in compliance with a state-issued groundwater discharge permit. Petition, p. 3. Although not relevant to this litigation, Michigan disputes this claim for the reason that substantive violations of the permit did occur. Petitioners also improperly characterize the various state consent orders as the "State Closure Plan". Petition, p. 4. The term "closure plan" is a term of art under RCRA and MHWMA. The state consent orders fail to satisfy virtually any of the closure plan criteria established under RCRA and MHWMA. See 40 Code of Federal Regulations ("C.F.R."), §§265.111 - 265.114; and 265.228 and 265.258.

Hazardous Waste Activities" listing the specific hazardous wastes generated, treated, stored, and disposed of at the Richland Facility. 742 F. Supp. at 959. Michael Ladney was identified on this notification as the "Installations Legal Owner". Id. Thereafter, on November 18, 1980, U.S. EPA received a RCRA Part A permit application signed by Mr. Ladney and identifying himself as the "owner" and "operator" of the Richland Facility. Id. In January, 1985, however, a revised Part A application was submitted to U.S. EPA identifying PPP as the owner of the Richland Facility. Id.

In July, 1984, PPP submitted an inadequate Part B permit application to U.S. EPA. 742 F. Supp. at 959. In February, 1985, U.S. EPA notified PPP of

the numerous deficiencies in this submittal. Id. On October 30, 1985, PPP informed U.S. EPA of its intent to close the Richland Facility rather than amend the Part B application. J.A. at 211. By letters dated November 5 and 20, 1985, PPP further informed U.S. EPA that the Richland Facility could not meet the RCRA financial responsibility requirements. 742 F. Supp. at 959. Consequently, on November 8, 1985, the Richland Facility lost its "interim status" to operate under RCRA. Id. at 960-961. Nevertheless, Petitioners continued to conduct hazardous waste activities at the Facility until December 12, 1987. Id.; and J.A. at 273.

Within 15 days of losing interim status, Petitioners were required to sub-

mit closure plans to close out the hazardous waste activities conducted at the Richland Facility. 742 F. Supp. at 960-961. This they failed to do. Id. Eventually, Petitioners submitted several closure plans and, on September 30, 1988, MDNR approved, with conditions, closure plans for the Facility's waste pile and on-site surface impoundments, requiring closure of these units by February 27, 1989 and April 3, 1989, respectively. J.A. at 445-449. Petitioners made no efforts to comply with the terms of these closure plans.

In March, 1987, the United States and the State of Michigan filed an enforcement action against Petitioners PPP and Michael Ladney seeking permanent injunctive relief and the imposition of civil

penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§6928(a) and (g), and Section 48 of MHWMA, Mich. Comp. Laws Ann. §299.548, for operating a hazardous waste facility after losing interim status and for failure to timely file necessary closure plans. Petitioner MCP subsequently was added by the governments as a defendant to this enforcement action.

On May 15, 1989, the federal and state governments jointly filed a motion for partial summary judgment on issues of liability. This motion was granted by the district court on May 14, 1990. See United States v. Production Plated Plastics, Inc., 742 F. Supp. 956 (W.D. Mich. 1990). In granting summary judgment, the lower court concluded that,

among other things, Petitioner Ladney was personally liable for the RCRA and MHWMA violations that occurred at the Richland Facility, and that Ladney offered no credible evidence to rebut such liability. Id. at 962-963.

Subsequently, on November 13, 1990, the United States and the State of Michigan filed a joint motion for partial summary judgment as to appropriate injunctive relief. On January 24, 1991, the district court granted in part and denied in part the governments' motion. See United States v. Production Plated Plastics, Inc., 762 F. Supp. 722 (W.D. Mich. 1991).[3] In pertinent part, the

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[3]The district court's injunctive opinion is not the subject of Petitioners' petition for writ of certiorari.

lower court granted the governments' request that Petitioners be ordered to finally implement the terms of the MDNR-approved closure plans and close the Richland Facility. 762 F. Supp. at 729-731.

The district court entered a permanent injunction on April 25, 1991 requiring Petitioners to comply with the MDNR-approved closure plans for the Richland Facility. J.A. at 112. Thereafter, on May 24, 1991, Petitioners filed a notice of appeal with the United States Court of Appeals for the Sixth Circuit. J.A. at 82. By per curiam opinion dated February 20, 1992, the Sixth Circuit adopted the opinions and findings of the lower court and affirmed both of the district court's summary judgment rulings.

In May, 1991, MDNR approved minor modifications to the 1988 closure plans and agreed to provide Petitioners with additional time to close the Richland Facility. The district court's permanent injunction was amended on June 19, 1991 to include these changes. J.A. at 874. Thereafter, Petitioner Ladney used certain royalty monies to implement closure activities at the Richland Facility but, to date, the Facility has not yet been finally closed.

REASONS FOR DENYING THE WRIT

THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT FINDING PETITIONER MICHAEL LADNEY PERSONALLY LIABLE FOR RCRA AND MHWMA VIOLATIONS THAT OCCURRED AT PETITIONERS' RICHLAND, MICHIGAN, FACILITY.

As stated in Sup. Ct. R. 10.1, "[a] review on writ of certiorari is not a matter of right, but of judicial discretion". Generally, certiorari will be granted only in the most compelling of circumstances, such as the need to secure uniformity of federal law or to address an issue of overriding public importance. Accord Sup. Ct. R. 10.1(a)-(c). As discussed herein, no such compelling circumstance exists in this case. Accordingly, Petitioners' petition for writ of certiorari should be denied.

A. Individual Corporate Officers And Directors Can Be Held Personally Liable For Violations Of RCRA And MHWMA.

Petitioner Ladney first argues that, as a matter of law, he cannot be held jointly liable along with Petitioner PPP for RCRA and MHWMA violations that occurred at the Richland Facility. This contention does not raise a substantial question deserving review by this Court. Moreover, it is without merit.

This case involves an appeal from an enforcement action brought by the governments under Section 3008(a) of RCRA, 42 U.S.C. §6928(a), and Section 48 of MHWMA, Mich. Comp. Laws Ann. §299.548. In pertinent part, these Sections authorize the Administrator of U.S. EPA and the State of Michigan, respectively, to commence a

civil action against "any person" who has violated RCRA, MHWMA, or their regulations. The term "person" is defined in both RCRA and MHWMA expansively to include an "individual", as well as a company, corporation, or partnership. See 42 U.S.C. §6903(15); and Mich. Comp. Laws Ann. §299.505(2).

Understandably, then, federal courts uniformly have concluded that corporate officers and employees may be held personally liable for violations of RCRA (and, by analogy, MHWMA). See United States v. Northeastern Pharmaceutical & Chemical Co. ("NEPACCO"), 810 F.2d 726 (8th Cir. 1986), cert. denied, 484 U.S. 848 (1987); Vermont v. Staco, Inc., 684 F. Supp. 822 (D. Vt. 1988); United States v. Conservation Chemical Co. of Illinois,

733 F. Supp. 1215 (N.D. Ind. 1989); United States v. Environmental Waste Control, Inc., 710 F. Supp. 1172 (N.D. Ind. 1989), aff'd, 917 F.2d 327 (7th Cir. 1990); and United States v. Vineland Chemical Co., 692 F. Supp. 415 (D. N.J. 1988), aff'd, 931 F.2d 52 (3rd Cir. 1991) (unpublished opinion).

Despite the unanimity of relevant case law on this issue, Petitioners suggest that a conflict exists among the circuits regarding corporate officer and director liability under RCRA. The case Petitioners rely on in making this assertion is Joslyn Mfg. Co. v. T. L. James & Co., Inc., 893 F.2d 80 (5th Cir. 1990). The Joslyn case, however, was not a RCRA enforcement action. Rather, it was a cost recovery lawsuit brought under the

Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq. Simply put, there is no conflict among the circuits with respect to corporate officer/director liability under RCRA. Accord Sup. Ct. R. 10.1(a).

Assuming Joslyn has some relevance, which it does not, the district court's and court of appeals' decisions in that case are not necessarily in conflict with this litigation. Although the district court in Joslyn mentions corporate officer liability, the issue directly before both the lower court and court of appeals, unlike this case, was whether a parent corporation could be held liable under CERCLA for the hazardous waste activities of a subsidiary. See Joslyn,

696 F. Supp. 222, 224 (W.D. La. 1988) and 893 F.2d at 82-83. Furthermore, even if viewed as a corporate officer liability case, Joslyn is contrary to the great weight of judicial authority under CERCLA upholding corporate officer and director liability for response costs. See New York v. Shore Realty, 759 F.2d 1032 (2nd Cir. 1985); NEPACCO, supra; Staco, supra; United States v. Northernaire Plating Co., 670 F. Supp. 742 (W.D. Mich. 1987); and Kelley v. Thomas Solvent Co., 727 F. Supp. 1554 (W.D. Mich. 1989).

Petitioners next argue there can be only one "owner" and one "operator" of a hazardous waste management facility for purposes of RCRA/MHWMA liability. The administrative rules promulgated under RCRA and MHWMA define "operator" to mean

"[t]he person responsible for the overall operation of a facility", and "owner" to mean "[t]he person who owns a facility or part of a facility". See 40 C.F.R. §260.10; and 1988 [Michigan] Ann. Admin. Code Supp. R. 299.9106(f) and (g). Petitioners erroneously assume that because "owner" and "operator" are defined as the owner or operator, this is conclusive proof there can be but one owner and one operator of the Richland Facility; i.e., PPP.

This cramped reading of the rules, however, is inconsistent with the broad statutory scheme of liability established by RCRA and MHWMA. Also, the very same RCRA regulations that define the terms "owner" and "operator" expressly provide that "[w]ords in the singular include the

plural". 40 C.F.R. §260.3(b). Additionally, the only courts specifically to have addressed Petitioners' contention have rejected it. See U.S. EPA v. Environmental Waste Control, Inc., 698 F. Supp. 1422, 1429 (N.D. Ind. 1988); and Conservation Chemical, 733 F. Supp. at 1221. Finally, it is self-evident that U.S. EPA and MDNR interpret "owner" and "operator" to include more than just one owner and one operator. This Court has long assigned great deference to an agency's interpretation of the very rules it implements and enforces. Bowles v. Seminole Rock Co., 325 U.S. 410, 413-414 (1945); and Udall v. Tallman, 380 U.S. 1, 16-17 (1965).

B. Based On The Uncontroverted Facts, The District Court Properly Granted Summary Judgment Against Petitioner Ladney.

Petitioners contend that even if RCRA/MHWMA liability can extend jointly to corporate officers and directors, the district court erred in granting summary judgment against Petitioner Ladney because the lower court failed to view the evidence in a light most favorable to Mr. Ladney. As with Petitioners' first argument, this issue does not raise a substantial federal question warranting this Court's review. Furthermore, the claim is meritless.

In recent rulings, this Court has encouraged lower courts to use the summary judgment device more liberally. Celotex Corp. v. Catrett, 477 U.S. 317,

327 (1986) ("Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole,..."); Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 585-588 (1986) (To defeat a motion for summary judgment, an opposing party must present factual claims that are not only material and controverted, but also plausible and reasonable); and Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-250 (1986) ("[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party .... If the evidence is merely colorable, ... or is not significantly probative, ... summary judgment may be granted" (citations omitted)).

The uncontroverted evidence before the district court clearly demonstrated Mr. Ladney's liability as an owner/ operator of the Richland Facility. At all times relevant to this case, Mr. Ladney was the president of both PPP and MCP. 742 F. Supp. at 963. He, furthermore, owned 68 percent of MCP's stock, which, in turn, owned PPP's stock. Id. Moreover, Mr. Ladney was the president and principal stockholder in a number of companies related to PPP and MCP, one of which, Detroit Plastic Molding, Inc. ("DPM"), provided the necessary corporate services to keep PPP and MCP operational. J.A. at 157.

Also, during depositional testimony, Mr. William Evans, Plant Manager of the Richland Facility, stated that he spoke

with Mr. Ladney by telephone at least once a week and sometimes as often as five times a day about operations at the Facility. 742 F. Supp. at 963; and J.A. at 175. Cf. Conservation Chemical, 733 F. Supp. at 1218-1219 (President and principal shareholder held liable based, in part, on the fact that he called the plant manager nearly every day to discuss operations). Mr. Evans also confirmed that PPP "is related to DPM" and that Mr. Ladney referred to DPM, PPP, MCP, and related companies as my companies. J.A. at 176-178. In addition, Mr. Steven D. Noble, an Environmental Specialist with PPP, confirmed that Mr. Ladney was in daily contact with his supervisor, William Evans. 742 F. Supp. at 963.

Additionally, the undisputed evidence before the district court showed that

Michael Ladney was familiar with the hazardous waste management activities and concomitant environmental problems associated with the Richland Facility. As early as August, 1980, Mr. Ladney was identified on the initial RCRA "Notification of Hazardous Waste Activities" form submitted to U.S. EPA as the "Installations Legal Owner" of the Richland Facility. 742 F. Supp. at 963. He, furthermore, signed the original RCRA Part A permit application as both the "owner" and "operator" of the Richland Facility. Id. He did so pursuant to the declaration that "I have personally examined and am familiar with the information in this and all attached documents...", and with knowledge that submitting false information could result in significant fines or imprisonment. J.A. at 186. Cf.

Conservation Chemical, 733 F. Supp. at 1218-1219 (President and principal shareholder personally reviewed and signed Part A and Part B applications).

Finally, Michael Ladney himself provided additional evidentiary support to the district court confirming he was knowledgeable of, personally involved in, and directly responsible for decisions involving the management of hazardous wastes and remediation of pollution at the Richland Facility. In an affidavit attached to a brief in opposition to the governments' motion for summary judgment, Mr. Ladney had stated that as president of PPP he was competent to testify as to the facts regarding environmental contamination at the Richland Facility. 742 F. Supp. at 963. He also asserted that

he had decisionmaking authority over environmental remediation at the Facility. Id. Similarly, by letter dated November 18, 1988 and provided to the district court as an exhibit to a brief, Mr. Ladney outlined his long-term plan of operations for the Richland Facility. Id.

In sum, the district court, after reviewing the evidence in a light most favorable to Mr. Ladney, properly concluded he was knowledgeable of, and actively involved in, the daily operations of the Richland Facility. 742 F. Supp. at 963. As correctly observed by the district court, Mr. Ladney provided no credible evidence that he was not an owner or operator of the Richland Facility. Id. The undisputed evidence,

in fact, showed that Mr. Ladney had significant say in and was the ultimate decisionmaker with respect to the operations and business activities of the Richland Facility. Id. Cf. NEPACCO, 810 F.2d at 745 (President/majority stockholder, who had authority to control operations, held personally liable despite lacking knowledge of hazardous waste disposal plans and not being present during waste disposal).

For the above-stated reasons, the district court properly granted, and the court of appeals appropriately affirmed, summary judgment as to Petitioner Ladney's liability under RCRA and MHWMA.

CONCLUSION AND RELIEF SOUGHT

For all of the foregoing reasons, Respondent State of Michigan respectfully urges this Court to deny the petition for writ of certiorari.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Thomas L. Casey
Acting Solicitor General
Counsel of Record
P. O. Box 30212
Lansing, Michigan 48909
(517) 373-1124

A. Michael Leffler
Steven E. Chester
Assistant Attorneys General
Attorneys for Respondents

Dated: June 19, 1992